

OS REGISTRY

27 OCT 1987

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STAT

FR [redacted] Legislation Div.

EXTENSION

NO.

STAT

Office of Congressional Affairs
7B14 Headquarters

OCA-5190-87

DATE 23 October 1987

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

STAT

1. Deputy Director for
Personnel Security

10/27

11/9

J

2.

STAT

3. C/CB

11/10

11/12

D

4.

DD/PS

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11/12

J

5.

C/PPS

18 Nov

B

6.

C/Policy Br.

19 Nov

JM

STAT

7.

~~OCA file/Deliberation~~

8.

OS REGISTRY

STAT

9.

H.R. 3071
Aids Federal Policy Act

STAT 10.

11.

STAT 12.

12.

STAT

13.

STAT

14.

15.

Per OP's request, I am forwarding a copy of a memo regarding AIDS and the referenced bill, H.R. 3071 for your review and comment. 10

1-3 Your views!
3-4
I don't see any impact on OS.4-5 Agree with
(Review)
OCC
with OCC
12 NOV 1987

S-6: FYI. I have advised [redacted]

[redacted] of our
"no comment"
re HR 3071.

ADMINISTRATIVE - INTERNAL USE ONLY

8 October 1987

OCA 87-5190

MEMORANDUM FOR: Director of Medical Services
 Director, Equal Employment Opportunity
 Deputy Director for Policy, Analysis &
 Evaluation/OP
 Chief, Management Support Division/OGC

FROM: [REDACTED] Legislation Division
 Office of Congressional Affairs

SUBJECT: AIDS Federal Policy Act of 1987, H.R. 3071

1. Attached is a copy of H.R. 3071, which proposes to establish a grant program to provide AIDS counseling and testing. Two provisions of which you may wish to take special note are § 2331(c), which states that disclosure of confidential information obtained during the counseling or testing process is punishable by a \$2,000 fine, and § 2341(a) which prohibits discrimination in employment or governmental services against persons infected with the AIDS virus, also punishable by a fine of \$2,000.

2. This bill is scheduled to be marked up on 7 October 1987 by the House Health and the Environment Subcommittee of the Energy and Commerce Committee. Thus, any comments you have on the bill should be brought to our attention at your earliest convenience so that we can ensure the Agency's equities are protected. You may telephone me on [REDACTED] with your comments.

Attachment

Distribution:

Original - Addressee(s) w/attachments
 1 - OCA/Read
 1 - OCA Registry w/o attachments
 1 - [REDACTED] Liaison Rep w/ attachments
 1 - OCA/Leg/Subject File: Miscellaneous Personnel w/o attachments
 1 - RH/Signer " "
 OCA/Leg, [REDACTED] pap (8 October 1987)

ADMINISTRATIVE - INTERNAL USE ONLY

LEGI-SLATE Report for the 100th Congress

October 6, 1987 12:36(EDT)

Report for H.R.3071 AIDS Federal Policy Act of 1987
As introduced in the House
Complete Text of this version

100th CONGRESS
1st Session

I

~~H. R. 3071~~

To amend the Public Health Service Act to establish a grant program to provide for counseling and testing services relating to acquired immune deficiency syndrome and to establish certain prohibitions for the purpose of protecting individuals with acquired immune deficiency syndrome or related conditions.

IN THE HOUSE OF REPRESENTATIVES
July 30, 1987

Mr. Waxman (for himself, Mr. Jeffords, Mr. Aspin, Mr. Berman, Mrs. Boxer, Mrs. Byron, Mr. Cardin, Mr. Coelho, Mrs. Collins, Mr. Dingell, Mr. Dixon, Mr. Dymally, Mr. Eckart, Mr. Edwards of California, Mr. Fazio, Mr. Foley, Mr. Frank, Mr. Garcia, Mr. Gilman, Mr. Green, Mr. Guarini, Mr. Hawkins, Mr. Hoyer, Mr. Leland, Mr. Levine of California, Mr. Lowry of Washington, Mr. Markey, Mr. Miller of Washington, Mr. Mineta, Mr. Montgomery, Mr. Owens of New York, Mr. Panetta, Ms. Pelosi, Mr. Richardson, Mr. Rowland of Georgia, Mr. Roybal, Mr. Scheuer, Mrs. Schroeder, Mr. Sikorski, Mr. Studds, Mr. Swift, Mr. Synar, and Mr. Weiss) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, the Judiciary, and Education and Labor

A BILL

To amend the Public Health Service Act to establish a grant program to provide for counseling and testing services relating to acquired immune deficiency syndrome and to establish certain prohibitions for the purpose of protecting individuals with acquired immune deficiency syndrome or related conditions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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SECTION 1. SHORT TITLE.

This Act may be cited as the "AIDS Federal Policy Act of 1987".

SEC. 2. ESTABLISHMENT OF GRANT PROGRAM FOR COUNSELING AND TESTING RELATING TO ACQUIRED IMMUNE DEFICIENCY SYNDROME AND ESTABLISHMENT OF CERTAIN PROHIBITIONS FOR PURPOSE OF PROTECTING INDIVIDUALS WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME OR RELATED CONDITIONS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended--

- (1) by redesignating title XXIII as title XXIV;
- (2) by redesignating sections 2301 through 2316 as sections 2401 through 2416, respectively; and
- (3) by inserting after title XXII the following new title:

"TITLE XXIII--ACQUIRED IMMUNE DEFICIENCY SYNDROME

"SEC. 2301. DEFINITION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME.

"For purposes of this title, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from, or associated with, acquired immune deficiency syndrome.

"Part A--Grants for Counseling and Testing

"SEC. 2311. ESTABLISHMENT OF PROGRAM.

"The Secretary, acting through the Director of the Centers for Disease Control, may make grants for the purposes of--

"(1) counseling individuals with respect to acquired immune deficiency syndrome in accordance with section 2317, including counseling relating to measures for the prevention of exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome; and

"(2) testing individuals in order to determine whether the individuals are infected with such etiologic agent.

"SEC. 2312. MINIMUM QUALIFICATIONS OF GRANTEEES.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant--

"(1) is a grantee pursuant to section 317(j)(2), section 318(c), section 329, section 330, section 509A, or section 1001;

"(2) has under any appropriations Act received funds as an alternate blood testing site; or

"(3) is a public general hospital.

"SEC. 2313. PREFERENCES IN MAKING GRANTS.

"The Secretary shall, in making grants under section 2311, give preference to qualified applicants that will provide counseling and testing pursuant to such section in any geographic area in which the incidence of cases of acquired immune deficiency syndrome, as indicated by the number of such cases reported to and confirmed by the Secretary, constitutes a significant percentage of the total population of the geographic area.

"SEC. 2314. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS.

"(a) In General.--The Secretary may not make a grant under section 2311 to an applicant unless the applicant has submitted to the Secretary an application for such a grant containing agreements in accordance with--

"(1) section 2315, relating to the confidentiality of records;

"(2) section 2316, relating to informed consent;

"(3) section 2317, relating to the provision of counseling services;

"(4) section 2318, relating to the provision of opportunities to

receive anonymous counseling and testing;

"(5) section 2319, relating to requiring testing as a condition of receiving other health services;

"(6) section 2320, relating to the use of grant funds to increase the availability of counseling and testing; and

"(7) section 2321, relating to the administration of grants.

"(b) Additional Required Information.--An application required in subsection (a) shall, with respect to agreements required to be contained in such an application, provide assurances of compliance satisfactory to the Secretary and shall otherwise be in such form, be made in such manner, and contain such information in addition to information required in subsection (a) as the Secretary determines to be necessary to carry out this part.

"SEC. 2315. REQUIREMENT WITH RESPECT TO CONFIDENTIALITY.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that the applicant will, in accordance with applicable law, ensure the confidentiality of information and records with respect to individuals counseled or tested pursuant to such section.

"SEC. 2316. REQUIREMENT WITH RESPECT TO INFORMED CONSENT.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that the applicant, in conducting testing pursuant to such section, will test an individual only after obtaining from the individual a statement, made in writing and signed by the individual, declaring that the individual has undergone counseling described in section 2317 and declaring that the decision of the individual with respect to undergoing such testing is voluntarily made.

"SEC. 2317. REQUIREMENT OF PROVISION OF CERTAIN COUNSELING SERVICES.

"(a) Counseling Before Testing.--The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that the applicant, before testing any individual pursuant to such section, will provide to the individual appropriate counseling with respect to--

"(1) measures for the prevention of exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome;

"(2) the accuracy and reliability of testing for such etiologic agent;

"(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome;

"(4) applicable provisions of law relating to the confidentiality of the fact that the individual is undergoing counseling or testing and the confidentiality of information provided by the individual during the process of such counseling or testing, including information with respect to any disclosures that may be authorized under applicable law and information with respect to the availability of anonymous counseling and testing pursuant to section 2318;

"(5) applicable provisions of law relating to the confidentiality of the results of such counseling or testing, including information with respect to any disclosures that may be authorized by law;

"(6) applicable provisions of law relating to the reporting to, and use by, State public health authorities of the results of such testing; and

"(7) applicable provisions of law relating to discrimination against individuals infected with the etiologic agent for acquired immune deficiency syndrome.

"(b) Counseling of Individuals With Negative Test Results.--The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that, if the results of testing conducted pursuant to such section

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indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the applicant will review for the individual the information provided under subsection (a) with respect to measures for the prevention of exposure to, and transmission of, such etiologic agent and with respect to the accuracy and reliability of testing for such etiologic agent.

"(c) Counseling of Individuals With Positive Test Results.--The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that, if the results of testing conducted pursuant to such section indicate that the individual is infected with the etiologic agent for acquired immune deficiency syndrome, the applicant will provide to the individual appropriate counseling with respect to--

"(1) measures for the prevention of the transmission of the etiologic agent for acquired immune deficiency syndrome;

"(2) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and appropriate social and support services;

"(3) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

"(4) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (3).

"(d) Construction of Section.--Agreements entered into pursuant to subsections (a) through (c) may not be construed to prohibit any grantee under section 2311 from providing counseling services described in such subsections to an individual who will not undergo testing described in section 2311(2) as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

"SEC. 2318. REQUIREMENT OF PROVISION OF OPPORTUNITIES FOR ANONYMOUS COUNSELING AND TESTING.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that the applicant will, to the extent permitted under applicable State law, offer substantial opportunities for an individual--

"(1) to undergo professional counseling and testing pursuant to such section without being required to provide any information relating to the identity of the individual; and

"(2) to undergo such professional counseling and testing through the use of a pseudonym.

"SEC. 2319. PROHIBITION AGAINST REQUIRING TESTING AS CONDITION OF RECEIVING OTHER HEALTH SERVICES.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that, with respect to an individual seeking health services from the applicant, the applicant will not require the individual to undergo testing described in section 2311(2) as a condition of receiving the health services unless such testing is medically necessary in the provision of the health services sought by the individual.

"SEC. 2320. REQUIREMENT OF INCREASED AVAILABILITY OF COUNSELING AND TESTING.

"With respect to any applicant for a grant under section 2311 that, during the majority of the 180-day period preceding the effective date of this title, carried out a program of counseling or testing with respect to acquired immune deficiency syndrome, the Secretary may not make a grant under such section to

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the applicant unless the applicant agrees that grant funds will be expended only for the purpose of significantly increasing the availability of such counseling and testing provided by the applicant above the level of availability provided during such period.

"SEC. 2321. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF GRANT.

"The Secretary may not make a grant under section 2311 to an applicant unless the applicant agrees that--

"(1) the applicant will not expend amounts received pursuant to such section for any purpose other than the purposes described in such section;

"(2) if the applicant imposes a charge for providing counseling and testing described in such section, the applicant will provide such counseling and testing without regard to the ability of the individual involved to pay such charge;

"(3) the applicant will establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant; and

"(4) the applicant will not expend more than 10 percent of amounts received under such section for the purpose of administering such amounts.

"SEC. 2322. PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

"(a) In General.--Upon the request of a grantee under section 2311, the Secretary may, subject to subsection (b), provide supplies, equipment, and services for the purpose of aiding the grantee in providing counseling and testing described in section 2311 and, for such purpose, may detail to the grantee any officer or employee of the Department of Health and Human Services.

"(b) Limitation.--

"(1) With respect to a request described in subsection (a), the Secretary--

"(A) may not comply with such a request unless the Secretary has not yet disbursed the full amount of the grant to the grantee and the portion not yet disbursed is not less than an amount equal to the fair market value of any supplies, equipment, or services to be provided by the Secretary; and

"(B) shall reduce the amount to be disbursed under section 2311 to the applicant by an amount equal to such fair market value.

"(2) Amounts withheld by the Secretary under paragraph (1)(B) shall be available to the Secretary for the payment of expenses incurred in providing supplies, equipment, or services under subsection (a).

"SEC. 2323. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this part \$400,000,000 for each of the fiscal years 1988 through 1990.

"Part B--Confidentiality With Respect to Counseling and Testing

"SEC. 2331. PROHIBITION AGAINST DISCLOSURE OF CERTAIN INFORMATION OBTAINED FROM PROCESS OF COUNSELING OR TESTING.

"(a) In General.--Except as provided in section 2332, 2333, or 2334, a person described in subsection (b) may not disclose identifying information with respect to a protected individual or a contact of such individual.

"(b) Persons Subject to Prohibition.--A person referred to in subsection (a) is a person who obtains identifying information with respect to a protected individual or a contact of such individual as a result of--

"(1) direct or indirect involvement in the process of providing to the protected individual professional counseling with respect to acquired

immune deficiency syndrome, which professional counseling is provided in relation to testing described in paragraph (2) (including such counseling provided as a result of a referral from a person carrying out such testing) and is provided under conditions in which the protected individual can reasonably expect that information provided by the individual will remain confidential;

"(2) direct or indirect involvement in the process of testing a protected individual for the purpose of determining whether the individual is infected with the etiologic agent for acquired immune deficiency syndrome;

"(3) direct or indirect involvement in the process of carrying out a purpose for which an authorized disclosure is made under section 2332, 2333, or 2334; or

"(4) reading any record containing identifying information with respect to a protected individual or a contact of such individual, which record is developed in the process of such counseling or testing or is developed in the process of carrying out such a purpose.

"(c) Establishment of Civil Money Penalty, Civil Causes of Action, and Criminal Penalty for Violation of Prohibition.--

"(1)(A) Any person who violates the prohibition established in subsection (a) shall be liable to the United States for a civil penalty in an amount not to exceed \$2,000 for each such violation.

"(B) A civil penalty under subparagraph (A) for a violation of subsection (a) shall be assessed by the Secretary by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Secretary shall provide written notice to the person who is the subject of the proposed order informing the person of the opportunity to receive a hearing on the record with respect to the proposed order. Such person may not receive such a hearing unless, before the expiration of the 15-day period beginning on the date such notice is received by the person, the person makes a request for the hearing.

"(C) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty imposed pursuant to subparagraph (A).

"(D) If the Secretary issues an order pursuant to subparagraph (B), the person who is the subject of the order may not seek judicial review of the order after the expiration of the 30-day period beginning on the date the order is issued.

"(E)(i) If a person fails to pay a civil penalty assessed pursuant to subparagraph (A), the Secretary may, subject to clause (ii), commence a civil action in any court of competent jurisdiction for the purpose of recovering the amount assessed and an amount representing interest computed in accordance with prevailing interest rates. In such an action, the decision of the Secretary to issue the order, and the amount of the penalty assessed by the Secretary, shall not be subject to review.

"(ii) The civil action referred to in clause (i) may be commenced only after an order under this paragraph has become final and--

"(I) the person who is the subject of the order fails to seek judicial review of the order within the period described in subparagraph (D); or

"(II) with respect to any judicial review, the reviewing court has entered final judgment against the person.

"(2) The Secretary may commence a civil action in any court of competent jurisdiction for the purpose of obtaining temporary or permanent injunctive relief with respect to preventing a person from making a disclosure of identifying information in violation of subsection (a).

"(3) Any person who knowingly violates the prohibition established in

subsection (a) may for each violation be fined in accordance with title 18, or imprisoned for not more than one year, or both.

"(4) A protected individual, or a contact of such individual, who is aggrieved as a result of the disclosure of identifying information in violation of subsection (a) may in a civil action against any person making such a disclosure obtain appropriate relief, including actual and punitive damages and a reasonable attorney's fee and cost. Such damages shall be not less than the liquidated amount of \$2,000.

"SEC. 2332. AUTHORIZED DISCLOSURES BY PERSONS INVOLVED IN PROCESS OF COUNSELING OR TESTING.

"(a) Consent to Disclosure.--

"(1) A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual and a contact of such individual if--

"(A) prior to the disclosure, the protected individual has obtained the legal age of majority under the law of the State in which the individual resides and has, in accordance with paragraph (3), consented to the disclosure; or

"(B) prior to the disclosure, the protected individual is legally incompetent under the law of the State in which the individual resides and the guardian of the individual consents, in accordance with paragraph (3), to the disclosure.

"(2) A consent under paragraph (1) shall be void to the extent that the consent authorizes the recipient of the disclosure to make subsequent disclosures in the discretion of the recipient.

"(3) A consent under paragraph (1) shall--

"(A) be in writing and be dated;

"(B) be signed by the protected individual pursuant to subparagraph (A) of such paragraph or by the guardian of such individual pursuant to subparagraph (B) of such paragraph;

"(C) specify the information that is to be disclosed;

"(D) specify the person, persons, or class of persons whom the consent authorizes to make the disclosure; and

"(E) specify the person, persons, or class of persons to whom the disclosure is to be made.

"(b) Disclosure Without Consent With Respect to Counseling and Testing.--A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual and a contact of such individual if the disclosure is made--

"(1) to a health care professional for the purpose of providing to the protected individual counseling or testing described in such paragraphs; or

"(2) to the protected individual.

"(c) Disclosure Without Consent to State Public Health Officer.--A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual and a contact of such individual if the disclosure is made to the State public health officer and the law of the State in which testing described in section 2331(b) is carried out requires such disclosure to the officer.

"(d) Disclosure Without Consent With Respect to Bodily Fluids and Organs of Protected Individuals.--A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual if the disclosure is made to a medical facility (including a blood bank) that has received or will receive blood from the protected individual for the purposes of blood transfusions, has received or will receive semen from the individual for the purposes of artificial

inseminations, has received or will receive breast milk from the individual for the purposes of distribution, or has received or will receive a donation from the individual of an organ for the purposes of transplantation.

"(e) Disclosures Without Consent Under Federal Guidelines.--A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual if the disclosure is made to a health care professional or provider that will provide health care to the protected individual under conditions in which, as determined under guidelines issued by the Secretary, the professional or provider will be occupationally exposed to the etiologic agent for acquired immune deficiency syndrome.

"(f) Certain Intraorganization Disclosures Without Consent.--With respect to an organization to which an authorized disclosure is made under any of subsections (a) through (e), a person receiving on behalf of the organization the identifying information involved may disclose within the organization such identifying information with respect to the protected individual (and, if authorized under the subsection involved, any contact of such individual) as may be medically necessary with respect to carrying out the purpose for which the authorized disclosure is made.

"SEC. 2333. AUTHORIZED REDISCLOSURE BY PERSONS RECEIVING DISCLOSURES WITH RESPECT TO PROCESS OF COUNSELING OR TESTING.

"(a) Redisdisclosure of Information Received From Counseling or Testing Facility.--Any person who, under any of subsections (a) through (f) of section 2332, receives an authorized disclosure may disclose the identifying information involved to any other person to whom such an authorized disclosure may be made under any of such subsections.

"(b) Redisdisclosure of Information Received From Recipient of Disclosure From Counseling or Testing Facility.--Any person who, under subsection (a), receives an authorized disclosure may disclose the identifying information involved to any other person to whom such an authorized disclosure may be made under any of subsections (a) through (f) of section 2332.

"SEC. 2334. COURT ORDERS WITH RESPECT TO DISCLOSURE OF IDENTIFYING INFORMATION.

"(a) In General.--A court of competent jurisdiction may, upon appropriate application to the court by the State public health officer, order any person described in section 2331(b) to make a disclosure to the health officer of identifying information with respect to a protected individual and a contact of such individual if the court determines that the disclosure is necessary with respect to preventing a clear and imminent danger of the transmission of the etiologic agent for acquired immune deficiency syndrome.

"(b) Opportunity to Participate in Proceedings.--Before requiring a disclosure under subsection (a), the court shall provide to the protected individual (and to any contact of such individual with respect to whom identifying information is sought) a reasonable opportunity to participate in the proceedings for determining whether a disclosure will be ordered.

"(c) Confidentiality of Proceedings.--Proceeding under subsection (a) shall be conducted in camera. Any references in court documents to the parties in such proceeding shall be references to pseudonyms for the parties. Records developed in such proceeding shall be sealed at the close of such proceeding.

"(d) Extent of Ordered Disclosure.--A court shall, in requiring a disclosure under subsection (a), order such disclosure only to the extent necessary to provide the requested relief and shall prohibit any unnecessary such disclosure.

"SEC. 2335. DISCLOSURES WITHOUT CONSENT WITH RESPECT TO CERTAIN CONTACTS OF PROTECTED INDIVIDUALS.

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"A person described in paragraph (1) or (2) of section 2331(b) may disclose identifying information with respect to a protected individual if--

"(1) such person is a physician or a professional counselor;

"(2) the disclosure is made to the spouse of the protected individual or to an individual whom the protected individual has, during the process of professional counseling or testing described in such paragraphs, identified as being a sexual partner of the protected individual; and

"(3) such person reasonably believes that--

"(A) the disclosure is medically appropriate; and

"(B) the protected individual will not inform such spouse or sexual contact with respect to the identifying information involved.

"SEC. 2336. REQUIREMENT OF CERTAIN NOTIFICATIONS WITH RESPECT TO DISCLOSURE OF IDENTIFYING INFORMATION.

"(a) In General.--Except as provided in subsection (b), any person who, under section 2332, 2333, or 2334, discloses any identifying information with respect to a protected individual shall--

"(1) ensure that such disclosure, whether made orally or in writing, is accompanied by a written statement declaring that any subsequent disclosure of the information provided may be prohibited by law; and

"(2) with respect to a living protected individual, notify such individual in writing of the fact of such disclosure.

"(b) Exceptions.--The requirements established in subsection (a) shall not apply to any authorized disclosure made under section 2332 or 2333 to a person who is part of the same organization as the person who makes the authorized disclosure.

"SEC. 2337. DEFINITIONS.

"For purposes of this part:

"(1) The term 'contact of a protected individual' means any individual with respect to whom a protected individual has, during the process of professional counseling or testing described in section 2331(b), provided information indicating that the individual is, or may be, infected with the etiologic agent for acquired immune deficiency syndrome.

"(2) The term 'identifying information' means any information--

"(A) relating to the identity of an individual who is a protected individual, or who is a contact of such individual, whichever is indicated by the context of usage; and

"(B) provided in a context indicating that the individual has undergone, is undergoing, or will undergo, professional counseling or testing described in section 2331(b) (including a context indicating the results of such professional counseling or testing of the individual).

"(3) The term 'protected individual' means an individual--

"(A) who has undergone professional counseling or testing described in section 2331(b); or

"(B) who has, with respect to undergoing such professional counseling or testing, disclosed his or her identity to a person who provides such professional counseling or testing.

"(4) The term 'records' includes electronic recordings and any other method of storing information.

"(5) The term 'testing for the purpose of determining whether an individual is infected with the etiologic agent for acquired immune deficiency syndrome' includes any diagnosis of such infection made by a health care professional licensed to make such a diagnosis under the law of the State in which the diagnosis is made."

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**"Part C--Inappropriate Use of Certain Information
Relating to Acquired Immune Deficiency Syndrome**

"SEC. 2341. PROHIBITION AGAINST DISCRIMINATION.

"(a) In General.--

"(1) A person may not discriminate against an otherwise qualified individual in employment, housing, public accommodations, or governmental services, solely by reason of the fact that such individual is, or is regarded as being, infected with the etiologic agent for acquired immune deficiency syndrome.

"(2) A person may not discriminate against an otherwise qualified individual in the provision of benefits under any program or activity that receives or benefits from Federal financial assistance solely by reason of the fact that such individual is, or is regarded as being, infected with the etiologic agent for acquired immune deficiency syndrome.

"(b) Construction.--With respect to an individual who is infected with the etiologic agent for acquired immune deficiency syndrome, the individual may not under subsection (a) be considered to be otherwise qualified if--

"(1) under guidelines issued by the Secretary, a public health officer makes a bona fide medical determination that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with such etiologic agent; or

"(2) with reasonable accommodation to the infection with such etiologic agent, the individual cannot satisfy bona fide essential criteria for--

"(A) employment, housing, public accommodations, or governmental services; or

"(B) the receipt of benefits under any program or activity that receives or benefits from Federal financial assistance.

"SEC. 2342. ESTABLISHMENT OF CIVIL MONEY PENALTY AND CIVIL CAUSES OF ACTION FOR VIOLATION OF PROHIBITION.

"(a) Civil Money Penalty.--

"(1) Any person who violates the prohibition established in section 2341 shall be liable to the United States for a civil penalty in an amount not to exceed \$2,000 for each such violation.

"(2) A civil penalty under paragraph (1) for a violation of section 2341 shall be assessed by the Secretary by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. The Secretary shall provide written notice to the person who is the subject of the proposed order informing the person of the opportunity to receive such a hearing with respect to the proposed order. Such person may not receive such a hearing unless, before the expiration of the 15-day period beginning on the date such notice is received by the person, the person makes a request for the hearing.

"(3) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty imposed pursuant to paragraph (1).

"(4) If the Secretary issues an order pursuant to paragraph (2), the person who is the subject of the order may not seek judicial review of the order after the expiration of the 30-day period beginning on the date the order is issued.

"(5)(A) If a person fails to pay a civil penalty assessed pursuant to paragraph (1), the Secretary may, subject to subparagraph (B), commence a civil action in any court of competent jurisdiction for the purpose of recovering the amount assessed and an amount representing interest computed in accordance with prevailing interest rates. In such an action,

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the decision of the Secretary to issue the order, and the amount of the penalty assessed by the Secretary, shall not be subject to review.

"(B) The civil action referred to in subparagraph (A) may be brought only after an order under this subsection has become final and--

"(i) the person who is the subject of the order fails to seek judicial review of the order within the period described in paragraph (4); or

"(ii) with respect to any judicial review of the order, the reviewing court enters final judgment against the person.

"(b) Injunctive Relief.--The Secretary may commence a civil action in any court of competent jurisdiction for the purpose of obtaining temporary or permanent injunctive relief with respect to preventing a person from being discriminated against in violation of section 2341.

"(c) Civil Cause of Action for Damages.--Any person who is discriminated against in violation of section 2341 may in a civil action against any person engaging in such discrimination obtain appropriate relief, including actual and punitive damages and a reasonable attorney's fee and cost. Such damages shall be not less than the liquidated amount of \$2,000.

"SEC. 2343. CONSTRUCTION OF PROHIBITION.

"Section 2341 may not be construed to prohibit any business organization providing life insurance or health insurance from requiring any applicant for such insurance to undergo testing for the purpose of determining whether the applicant is infected with the etiologic agent for acquired immune deficiency syndrome."

SEC. 3. CONFORMING AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended--

(1) in section 305(h), by striking "2313" each place it appears and inserting "2413";

(2) in section 465(f), by striking "2301" and inserting "2401"; and

(3) in section 497, by striking "2301" and inserting "2401".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1987, or upon the date of the enactment of this Act, whichever occurs later.

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